



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

This is a Resolution authorizing the Mayor to execute documents necessary to effectuate the assignment of all of Hoops' L.P. interest, obligations and responsibilities in, to and under existing agreements with the City of Memphis regarding the Memphis Grizzlies and use of the FedEx Forum to RJP Group, LLC, and the assumption by RJP of all obligations of Hoops under such agreements.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

City Attorney

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This is not a change to an existing ordinance or resolution.

**4. State whether this requires a new contract, or amends an existing contract, if applicable.**

The approval of this Resolution will require the assignment and assumption of various existing agreements.

**5. State whether this requires an expenditure of funds/requires a budget amendment.**

This action will not require an expenditure of funds or budget amendment.



**A RESOLUTION OF THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE AUTHORIZING THE EXECUTION AND DELIVERY OF A CONSENT AND AGREEMENT WITH RESPECT TO MEMPHIS ARENA USE AND OPERATING AGREEMENT AND RELATED NON-RELOCATION AGREEMENT AND NAMING RIGHTS AGREEMENT IN CONNECTION WITH THE ASSIGNMENT BY HOOPS, L.P. OF ALL OF ITS INTERESTS, RIGHTS AND OBLIGATIONS THEREUNDER.**

**WHEREAS**, the City of Memphis, Tennessee (the "City"), and Shelby County, Tennessee (the "County," and together with the City, collectively, the "City/County") and Hoops, L.P., a Delaware limited partnership ("Hoops") previously entered into that certain Memphis Arena Use and Operating Agreement, dated as of June 29, 2001, as amended by that certain First Amendment To Memphis Arena Use and Operating Agreement and as further amended by that certain Second Amendment To Memphis Arena Use and Operating Agreement (the "Use Agreement"), pursuant to which the City/County granted to Hoops the right, authority, license and privilege to use, possess, occupy, conduct business from, lease space in and operate a sports and entertainment arena complex now known as the FedEx Forum; and

**WHEREAS**, City/County, as Assignor, and The Memphis and Shelby County Sports Authority, Inc. (the "Authority"), as Assignee, previously entered into that certain Assignment of Memphis Arena Use and Operating Agreement, dated as of May 20, 2002, pursuant to which City/County assigned to the Authority some, but not all, of the rights and responsibilities City/County acquired pursuant to the Use Agreement; and

**WHEREAS**, City/County and Hoops previously entered into that certain Non-Relocation Agreement, dated as of June 29, 2001, as amended by that certain First Amendment to Non-Relocation Agreement (the "Non-Relocation Agreement") relating to retaining of the NBA Franchise known as the Memphis Grizzlies in Memphis; and

**WHEREAS**, City/County and Hoops previously entered into that certain Naming Rights and License Agreement dated May 20, 2002 (the "Naming Rights Agreement" and collectively with the Use Agreement and the Non-Relocation Agreement, the "Agreements"), relating to the naming rights to the arena now known as the FedEx Forum; and

**WHEREAS**, Hoops has advised City/County and the Authority of its plans to assign its rights under the Agreements to RJP Group, LLC, a Nevada limited liability company ("RJP") pursuant to that certain Asset Purchase Agreement, dated as of June 7, 2012, by and between Hoops and RJP, and solely for the purposes of certain sections thereof, Heico Holding, Inc. (the "Purchase Agreement"); and

**WHEREAS**, the Authority desires to approve a Consent And Agreement With Respect To Memphis Arena Use And Operating Agreement and related Non-Relocation Agreement and Naming Rights Agreement ("Consent And Agreement"), in substantially the form attached hereto , and to authorize the execution thereof, the effect of which will be to consent to the assignment of all of Hoops' interests, rights and obligations in, to and under the Agreements, to RJP, and the assumption by RJP of all obligations of Hoops under the Agreements.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE**, as follows:

**SECTION 1.** The recitals set forth above are hereby adopted by the Council of the City of Memphis as the findings of the City and are incorporated herein.

**SECTION 2.** That the Consent And Agreement, in substantially the form attached hereto and as presented to this Council, be and the same is hereby approved and the Mayor is hereby authorized to execute his signature thereon on behalf of the City, and to deliver the same to the County and the Authority.

**BE IT FURTHER RESOLVED**, That the Mayor is hereby authorized to execute and deliver all papers, certificates, receipts, and other documents deemed necessary and to take all steps necessary to effect the transactions contemplated by this Resolution.

**BE IT FURTHER RESOLVED**, That this Resolution shall take effect immediately, and all resolutions in conflict with this Resolution are herewith repealed to the extent of such inconsistency.

**CONSENT AND AGREEMENT  
WITH RESPECT TO  
MEMPHIS ARENA USE AND OPERATING AGREEMENT  
AND RELATED NON-RELOCATION AGREEMENT AND NAMING RIGHTS AGREEMENT**

THIS CONSENT AND AGREEMENT ("Consent") is entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2012 by and among CITY OF MEMPHIS ("City"), SHELBY COUNTY, TENNESSEE ("County"), THE MEMPHIS AND SHELBY COUNTY SPORTS AUTHORITY, INC. ("Sports Authority," and together with City and County, collectively, "Owners"), HOOPS, L.P. a Delaware limited partnership ("Hoops") and RJP GROUP, LLC, a Nevada limited liability company ("Assignee") with respect to (a) that certain Memphis Arena Use and Operating Agreement dated as of June 29, 2001, as amended by that certain First Amendment To Memphis Arena Use And Operating Agreement and as further amended by that certain Second Amendment To Memphis Arena Use And Operating Agreement (the "Use Agreement"), (b) that certain Non-Relocation Agreement dated June 29, 2001, as amended by that certain First Amendment to Non Relocation Agreement (the "Non-Relocation Agreement") and (c) that certain Naming Rights and License Agreement dated May 20, 2002 (the "License Agreement" and collectively with the Use Agreement and the Non-Relocation Agreement, the "Agreements").

1. **Consent to Assignment.** Subject to and specifically conditioned upon the terms and conditions set forth in this Consent, Owners hereby grant their consent to the assignment by Hoops to Assignee of all of Hoops' interests, rights and obligations in, to and under the Agreements. The assignment between Hoops and Assignee shall be in the form attached to this Consent as Exhibit A (the "Assignment").

2. **Assumption of Liability.** Effective on the effective date of the Assignment, Assignee assumes all obligations of Hoops under the Agreements and ratifies and agrees to be bound by all the provisions of the Agreements. Further, Assignee agrees that Owners shall have the right of direct action against Assignee for any such assumed liabilities pursuant to the same remedies as are currently available against Hoops pursuant to the provisions of the Agreements.

3. **Limited Consent.** This Consent is limited solely to the Assignment, and Owners reserve the right to consent or to withhold consent, and all other rights under the Agreements, with respect to any other matters including, without limitation, any further or additional assignments or transfers of the Agreements or any interest therein or thereto.

4. **Parties Bound.** By acceptance of this Consent, Hoops and Assignee acknowledge and agree (a) to be bound by all of the terms and conditions of this Consent as set forth herein, and (b) that Owners shall not be bound by this Consent unless Owners receive a fully executed copy of the Assignment and this Consent.

5. **Agreements Not Modified.** The Agreements shall remain unmodified and in full force and effect and the parties hereby ratify and confirm the terms of the Agreements.

6. **Integration.** This Consent constitutes the entire agreement of the parties concerning the transactions contemplated by this Consent. All prior understandings and agreements between the parties concerning these matters are merged into this Consent, which alone fully and completely expresses their understanding.

7. **Severability.** If any provision of this Consent or the application of a provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Consent and the application of the invalid or unenforceable provision to persons or circumstances other than those

as to which it is invalid or unenforceable shall not be affected, and the remainder of this Consent shall otherwise remain in full force and effect. Moreover, the invalid or unenforceable provision shall be reformed, if possible, so as to accomplish most closely the intent of the parties consistent with applicable law.

8. **Construction of Language.** This Consent shall not be more strictly construed against any party by reason of the fact that one party may have drafted any or all of the provisions of this Consent. All terms defined in the Agreements shall have the same meaning in this Consent unless otherwise expressly set forth herein.

9. **Counterparts.** This Consent may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

10. **Governing Law.** This Consent shall be construed in accordance with and governed for all purposes by the laws of the State of Tennessee applicable to contracts executed and to be wholly performed within such State.

11. **Amendment.** This Consent may not be changed, modified, or discharged in whole or in part except by an agreement in writing signed by all parties to this Consent.

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IN WITNESS WHEREOF and intending to be legally bound and to bind their respective successors and assigns, Owners, Hoops and Assignee have executed this Consent and Agreements as of the date first above written.

**OWNERS:**

CITY OF MEMPHIS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form and Legality:

\_\_\_\_\_  
City Attorney

SHELBY COUNTY, TENNESSEE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form and Legality:

\_\_\_\_\_  
County Attorney

MEMPHIS AND SHELBY COUNTY  
SPORTS AUTHORITY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HOOPS:**

HOOPS, L.P.

By: HEISLEY MEMBER, INC.  
Its general partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**Form Of**  
**Assignment and Assumption of Memphis Arena Use and Operating Agreement**  
**and Related Non-Relocation Agreement and Naming Rights Agreement**

This Assignment and Assumption of Memphis Arena Use and Operating Agreement and Related Non-Relocation Agreement and Naming Rights Agreement (this "Assignment"), dated as of \_\_\_\_\_, 2012, is by and between Hoops, L.P., a Delaware limited partnership ("Assignor"), and RJP Group, LLC, a Nevada limited liability company ("Assignee"), and is made with reference to that certain Asset Purchase Agreement, dated as of June 7, 2012, by and between Assignee, Assignor and solely for the purposes of certain sections thereof, Heico Holding, Inc. (the "Purchase Agreement").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows intending to be legally bound:

1. Assignment of Agreements. As of the date hereof, Assignor does hereby irrevocably sell, convey, transfer, and assign to Assignee all of Assignor's interests, rights and obligations in, to and under (a) that certain Memphis Arena Use and Operating Agreement dated as of June 29, 2011, by and among the City of Memphis, Shelby County, Tennessee (the "City/County"), the Memphis And Shelby County Sports Authority, Inc. (the "Sports Authority") and Assignor, as amended by that certain First Amendment To Memphis Arena Use And Operating Agreement and as further amended by that certain Second Amendment To Memphis Arena Use And Operating Agreement (the "Use Agreement"), (b) that certain Non-Relocation Agreement dated June 29, 2011, as amended by that certain First Amendment to Non-Relocation Agreement, by and among the City/County and Assignor (the "Non-Relocation Agreement") and (c) that certain Naming Rights and License Agreement dated May 20, 2002, by and among the City/County and Assignor (the "License Agreement" and collectively with the Use Agreement and the Non-Relocation Agreement, the "Agreements").

2. Assumption. Assignee hereby accepts from Assignor and assumes all of Assignor's interests, rights and obligations in, to and under the Agreements, and undertakes the duties, responsibilities and obligations of Assignor under the Agreements.

3. Miscellaneous. This Assignment (a) is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns, (b) shall be governed by and construed in accordance with the internal laws of the State of Delaware, and (c) may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed an original. If a provision of this Assignment should, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provisions hereof. The titles and subtitles used in this Assignment are used for convenience only and are not to be considered in construing or interpreting this Assignment.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Assignment to be executed by it duly authorized officers as of the day and year first above written.

**ASSIGNEE**

**RJP GROUP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR**

**HOOPS, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_